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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,019	06/01/2001	Mitchell T. Berg	29820.9	3234
500	7590	11/21/2005	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC			LIN, KELVIN Y	
701 FIFTH AVE			ART UNIT	
SUITE 6300			PAPER NUMBER	
SEATTLE, WA 98104-7092			2142	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/873,019

Applicant(s)

BERG, MITCHELL T.

Examiner

Kelvin Lin

Art Unit

2142

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-20.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: 1449 attachment is enclosed.

Continuation of 3. NOTE: Regarding to applicant's argument that "the examiner fails to identify any device in the cited art corresponding to the recited 'second computing device' in claims 1. The Office disagrees.

Regarding to claim 1, in Johnson, col.3, l.60-67, col.4, l.1-3, col.7, l.21-23 discloses that the configuration editor (application software) in the field device of the intelligent variety is initiated executed the configuration editor in enable (first state) condition. Therefore, the device is read on as the first device. And the device, with configuration editor is disabled (second state) which is incorporated with control network for configuration of the field device, is read on as the second device, when the configuration editor is provided by the network, see col.4, l.2-3, col.6, l.24-25.

In the remark, page 8, line 19, the reference US. Patent No. should be 6788980, not 6788890.

An amendment filed after rejection is not entered as a matter of right and must be filed in compliance with 37 CFR 1.116, or 1.312, respectively (see MPEP sec. 201). An amendment that will place the application either in condition for allowance or in better form for appeal may be admitted.

Amendments complying with objections or requirements as to form are to be permitted after final action in accordance with 37 CFR 1.116(a) (see MPEP sec 706.07(e)) may also be admitted. Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116(c) is expected in all amendments after final rejection (see MPEP sec. 714.13). An amendment filed at any time after final rejection, but before an appeal brief is filed, may be entered upon or after filing of an appeal brief provided the total effect of the amendment is to (A) remove issues for appeal, and/or (B) adopt examiner suggestion (MPEP sec. 714.13 see also MPEP sec. 1207 and sec. 1211).

In this case, added new limitation "receive state information through a first port" to claim 1, and 11 does not comply with any previous objection or requirements nor does it seem to correct any lack of antecedent basis. Therefore, amendment filed after final rejection will not be entered including the new claims 36-50.


BEATRIZ PRIETO
PRIMARY EXAMINER